IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Bail Appl..No. 6144 of 2007()

CRIME NO.740/06 OF ALAPPUZHA NORTH POLICE STATION.

PETITIONER :

SHIBY FRANCIS,
AGED 38 YEARS,
W/O. FRANCIS,
KOOTHOOR HOUSE,
AVULUKUNNAM,
KALATH, ALAPPUZHA.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM. (REP. BY THE
STATION HOUSE OFFICER,
TOWN NORTH POLICE STATION,
ALAPPUZHA.)

2. SUPERINTENDENT OF POLICE,
ALAPPUZHA.

3. CIRCLE INSPECTOR OF POLICE,
TOWN NORTH POLICE STATION,
ALAPPUZHA.

BY P.P. SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6144 OF 2007

Dated this the 5th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner apprehends arrest on the basis of complaints that may have been filed by the ICICI Bank and its officials against the petitioner. The petitioner has a grievance that a vehicle belonging to her which the ICICI Bank had financed was forcibly taken away from her possession. In respect of that, she has initiated criminal proceedings against the bank and its officials. The learned counsel for the petitioner brings to my notice a decision in **Sibi Francies v. State of Kerala** (2007 (3) KLT 923) which was passed on a writ petition filed by her. On the basis of the orders of this Court, criminal proceedings have been initiated against the bank and its officials. The vehicle involved in the case has been released to the petitioner

on interim custody as per the order of the learned Magistrate.

2. The grievance of the petitioner in this petition filed on 4/10/07 is that she was taken into custody by the police on 3/10/07 and was compelled under duress and threat to enter into an agreement, a copy of which is produced as Annexure-II. She was threated that there was a warrant of arrest issued against her by a court in Channai. She was dragged to the police station. There, she was compelled to subscribe her signature to Annexure-II which she did apprehending danger to herself. She has also been compelled to subscribe her signature to Annedxure-II(a) letter also, it is complained. She was released at the end of the day on 3/10/07. According to the petitioner, Annexures-II and II(a) documents are not executed by her voluntarily. She now intends to proceed against the bank, its officials and the police officials who colluded. She apprehends that she may be arrested now because of such a stand taken by her, in execution of the warrant of arrest issued by the Chennai court. It is, in these circumstances, that she has come to this Court with this application for anticipatory bail. The petition was moved emergently on 4/10/07. Considering the urgency of the matter, immediately notice was ordered and the matter was posted to this date.

3. The learned Public Prosecutor submits that it is true that a warrant of arrest issued by the Metropolitan Magistrate Court-III, George Town, Chennai, in C.C.No.4487/07 has been received by the Superintendent of Police, Alappuzha, and has been endorsed for execution to the Circle Inspector of Police, Alappuzha North Police Station. The C.I. of Police, Alappuzha North Police Station, through the learned Public Prosecutor, submits that the warrant of arrest has not been executed yet. An attempt was made on 3/10/07 to execute the warrant; but the petitioner was not actually available. The petitioner's husband allegedly informed the police officials that the matter has been settled and the execution of warrant may not be done. But as the warrant is issued by a court, the police want to execute the warrant. They want to arrest the petitioner as expeditiously as possible. All other allegations are denied.

4. The apprehension of the petitioner is thus found to be absolutely justified. In the nature of the allegations raised, I am satisfied that directions under Sec.438 of the Cr.P.C. can and ought to be issued in favour of the petitioner. The decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662) is authority for the proposition that powers under Sec.438 of the Cr.P.C. can be invoked even in a case where the

apprehended arrest is in execution of a non-bailable warrant of arrest issued by a court after taking cognizance. I am, in these circumstances, satisfied that subject to appropriate conditions, directions under Sec.438 of the Cr.P.C. can be issued in favour of the petitioner.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Chief Judicial Magistrate, Alappuzha, on or before 12/10/07 and shall execute a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate undertaking to appear before the learned Metropolitan Magistrate, Chennai, on or before 12/11/07. After appearing before the learned Magistrate, the petitioner shall seek appropriate order regarding bail from the said Magistrate.

(ii) If the petitioner does not appear before the learned C.J.M., Alappuzha, on or before 12/10/07 or does not appear before the learned Metropolitan Magistrate at Chennai on or before 12/11/07, appropriate action can be taken to arrest and produce the petitioner before the learned Magistrate.

(iii) If the petitioner does not appear before the learned Magistrates as directed in clause (i), directions issued above

shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with her in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to her surrender on 12/10/07 as directed in clause (i) above, she shall be released on her executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 12/10/07.

6. The learned counsel for the petitioner submits that the petitioner is taking appropriate steps against the alleged improper conduct of the police officials and the bank and will be taking steps to get the documents executed avoided. I am hence not proceeding to make any observations about the allegations in respect of such creation of documents under duress.

(R. BASANT, JUDGE)

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